

UNITED STATES DISTRICT COURT

District of _____

UNITED STATES OF AMERICA

V.

Certified Environmental Services, Inc

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Organizational Defendants)

CASE NUMBER: DNYN509CR000319-001

Kimberly M. Zimmer

120 E. Washington Street, Suite 815

Syracuse, NY 13202

315-422-9909

Defendant Organization's Attorney

Date of Original Judgment: 11/3/2011
(or Date of Last Amended Judgment)

Reason for Amendment:

- ☒ Correction of Sentence on Remand (18 U.S.C. § 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))

- ☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT ORGANIZATION:

☒ pleaded guilty to count(s) 1 of the Information on May 5, 2015.*☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
42 U.S.C. § 7413(c)(4). The defendant organization is sentenced as provided in pages 2 through 7 of this judgment.	Negligent Release of Asbestos Into the Air	2007	1

☐ The defendant organization has been found not guilty on count(s) _____☒ Count(s) First Superseding Indictment, 09CR391* ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's

Federal Employer I.D. No.: 16-1387218

Defendant Organization's Principal Business Address:

7280 Caswell Street

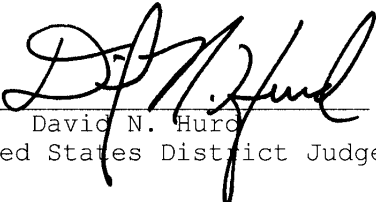
North Syracuse, NY 13212

Defendant Organization's Mailing Address:

Same

November 24, 2015

Date of Imposition of Judgment


 David N. Hurd
 United States District Judge

December 11, 2015

Date

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PROBATION

The defendant organization is hereby sentenced to probation for a term of: 5 years with credit for 32 months already served.*

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is be a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions below or on the attached page (if indicated below).

See Page 3.

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer at least ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant corporation shall make periodic submissions to the probation officer, at quarterly intervals, or as requested by the probation officer, reporting on the corporation's financial condition and results of business operations, and accounting for the disposition of all funds received.
2. The defendant corporation shall be required to notify the probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.
3. *The defendant corporation has previously made payments of \$87,960.06 and such money shall be applied to the restitution in this case. Further, the defendant corporation shall make a lump-sum payment of \$100,000 in restitution within 30 days of the date of sentencing, and the defendant corporation shall make monthly payments of \$2,000 or 10 percent of the corporation's net monthly cash flow, whichever is greater, during the term of probation. Payments shall be forwarded to the U.S. District Court Clerk. (* Individual victim losses and other findings by the Court are noted below.)

* As fully articulated on the record at the time of sentencing, the Court found \$409,829.67 as the amount subject to discretionary restitution, based on the aggregate of the following:

Victim 1 - \$112,496.00
Victim 2 - \$16,789.50
Victim 3 - \$5,720.28
Victim 4 - \$23,670.35
Victim 5 - \$2,404.00
Victim 6 - \$816.50
Victim 7 - \$3,061.75
Victim 8 - \$700.25
Victim 9 - \$55,962.10
Victim 10 - \$19,362.00
Victim 11 - \$3,505.50
Victim 12 - \$3,776.78
Victim 13 - \$137,060.25
Victim 14 - \$24,504.41

The Court noted restitution to Victims 1 through 8, which are associated with AAPEX projects, is to be paid jointly and severally with John Leathley, Docket Number 08-CR-172, in the amounts set forth above.

The Court noted restitution payable to the Victim 10, which totals \$19,362, is payable jointly and severally with Paragon Environmental Construction, Inc., Docket Number 08-CR-624. The Court further gave notice this case involves other individuals who may be held jointly and severally liable for payment of all or part of the restitution ordered and may order such payment in the future.

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CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 125*	\$ Waived*	\$ N/A

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are be due as follows:

A ☒ Lump sum payment of \$ 125 due immediately, balance due

- ☐ not later than _____, or
☐ in accordance with ☐ C or ☐ D below; or

B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below; or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary penalties are made to the clerk of the court.

☐ The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant numbers), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

☐ The defendant organization shall pay the cost of prosecution.

☐ The defendant organization shall pay the following court cost(s):

☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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STATEMENT OF REASONS

☒ The court adopts the presentence report and guideline applications **WITHOUT CHANGE**.

OR

☐ The court adopts the presentence report guideline applications **BUT WITH THESE CHANGES**:

Guideline Range Determined by the Court:

☐ The defendant organization is a criminal purpose organization pursuant to U.S.S.G. §8C1.1.

OR

☐ The calculation of the guideline fine range is unnecessary because the defendant organization cannot pay restitution pursuant to U.S.S.G. §8C2.2(a).

OR

Total Offense Level: _____

Base Fine: _____

Total Culpability Score: _____

Fine Range: \$ _____ to \$ _____

☐ Disgorgement amount of \$ _____ is added to fine pursuant to U.S.S.G. §8C2.9.

☐ Fine offset amount of _____ is subtracted from fine pursuant to U.S.S.G. §8C3.4.

☒ Fine waived or below the guideline range because of inability to pay pursuant to U.S.S.G. §8C3.3.

RESTITUTION DETERMINATIONS

Total Amount of Restitution: \$ _____

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

☐ For offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

☐ Restitution is not ordered for other reasons:

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c) for the following reason(s):

AO 245F (Rev. 12/03) Amended Judgment in a Criminal Case for Organizational Defendants
Attachment A — Statement of Reasons

(NOTE: Identify Changes with Asterisks (*))

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STATEMENT OF REASONS

- ☐ The sentence is within the guideline range and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence departs from the guideline range:
- ☐ upon motion of the government, as a result of a defendant's substantial assistance, or
 - ☐ for the following specific reason(s):
-